

DOCUMENT RESUME

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**[Protest to Rejection of Unsolicited Price Reduction]. B-189350.
August 25, 1977. 2 pp.**

**Decision re: Benjamin Bros., Inc.; by Milton Socolar (for Elmer
B. Staats, Comptroller General).**

Issue Area: Federal Procurement of Goods and Services (1900).

Contact: Office of the General Counsel: Procurement Law II.

**Budget Function: National Defense: Department of Defense -
Procurement & Contracts (058).**

**Organization Concerned: Department of the Army: Frankford
Arsenal, Philadelphia, PA.**

**Authority: A.S.P.R. 3-506. B-176283(3) (1973). B-182104 (1974).
47 Comp. Gen. 279.**

Company protested the rejection of its unsolicited price reduction submitted after the close of negotiations and contended that the Army should hold further negotiations to take advantage of its willingness to reduce its price. The contracting officer may exercise discretion in deciding whether negotiations are required; no abuse of this discretion was evident in this case. (Author/HTW)

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DECISION



H. Martin
Proc. II
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20543

FILE: B-189350

DATE: August 25, 1977

MATTER OF: Benjamin Brothers, Inc.

DIGEST:

Even though offeror indicates after closing date for proposals that it has not submitted its best price and that it can provide monetary savings to Government, contracting official may exercise discretion in deciding whether negotiations are required. Abuse of discretion in refusing to negotiate is not evidenced in circumstances.

Benjamin Brothers, Inc. (Benjamin) protests the rejection of its unsolicited price reduction submitted after the close of negotiations under request for proposals (RFP) DAAA 25-77-R-0012, issued by the Frankford Arsenal, U.S. Army, for the removal and packing of production equipment at Frankford Arsenal. Benjamin contends that the Army should hold further negotiations to take advantage of its willingness to reduce its price.

After three amendments to the RFP, initial offers were received from 14 companies. Discussions were conducted with all offerors considered to be in the competitive range and best and final offers were requested. Offerors outside the competitive range were advised that their proposals were unacceptable and that revisions would not be considered. Subsequently, the call for best and final offers was rescinded and an amendment (the fourth) was issued to all offerors which, in part, substituted a revised wage determination, increased the equipment required to be removed, revised the performance schedule and requested revised offers by May 23, 1977. Offerors were informed that award might be made without further negotiations. The record indicates that a timely proposal was received from Benjamin and that by letter dated May 27, 1977, Benjamin further offered to reduce its price. On June 1, the agency wrote Benjamin that

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this reduction was a late modification which would not be considered. By letter dated June 2, Benjamin asked the agency to disregard its letter of May 27, stated that it had found a method to save the Government money and requested an opportunity to "renegotiate" its pricing. This was also treated as a late modification and rejected. Subsequently Benjamin protested to this Office.

In issuing amendment 0004, the Army permitted offerors to revise their proposals and reserved to itself the right to make award without further negotiation. The procuring activity viewed this amendment as establishing a new requirement justifying a request for proposals from each original offeror.

Under Armed Services Procurement Regulation § 3-506 relating to the receipt of late modifications, Benjamin's unsolicited reductions offered after May 23 could not have been considered by the contracting officer. In our opinion, negotiation is not appropriate in these circumstances unless it is clearly in the best interest of the Government. B-175283(3), February 5, 1973; ILC Dover, B-182104, November 29, 1974, 74-2 CPD 301. While a potential monetary saving, in appropriate circumstances, may cast doubt as to the reasonableness of the previously offered prices, 47 Comp. Gen. 779 (1967), we cannot say that this is the case here. The potential saving in this case is moderate in comparison to the timely offers received. Moreover, removal of equipment from Government premises is an unequivocal requirement which hardly is susceptible to technological breakthroughs resulting in significant potential cost savings to the Government. Even though an offeror indicates after the closing date for proposals that it has not submitted its best price and that it can provide a monetary savings to the Government, the contracting officer, nevertheless, may exercise discretion in deciding whether, in all of the circumstances, negotiations are required. We cannot conclude that award on the basis of the May 23 offers would be an abuse of the contracting officer's discretion.

Accordingly, this protest is denied.

Milton J. Arnold
for Comptroller General
of the United States